

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. FIFRA-08-2002-02

IN THE MATTER OF:)	
)	
)	
Five Star Affiliates, Inc.)	
6731 East 50 th Avenue)	CONSENT AGREEMENT
Commerce City, CO 80022)	
)	
)	
Respondent.)	
)	

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and Five Star Affiliates, Inc., ("Respondent"), by their undersigned representative(s), hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Consent Agreement is entered into by the parties for the purpose of concluding this matter, as provided for in 40 C.F.R. Section 22.13(b).
2. The Complaint filed in this matter alleges that Respondent sold or distributed misbranded pesticides or, in the alternative, sold or distributed a Pesticide Product with an Altered Label, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E).
3. This Consent Agreement (hereafter the "Consent Agreement") applies to and is binding upon EPA and upon Respondent, and

Respondent's officers, directors, employees, agents, successors and assigns. Any change in the constitution of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

4. Respondent waives its right to a hearing on any issue of law or fact set forth in this Pleading.
5. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained in the Complaint filed in this matter.

II. TERMS OF SETTLEMENT

6. The Complaint filed in this matter proposed a higher penalty assessment than the amount agreed to herein. For good cause shown, and for the purposes of settlement, Complainant agrees to reduce the penalty proposed in the Complaint to TEN THOUSAND DOLLARS (\$10,000.)
7. Respondent consents to the issuance of a Final Order which incorporates the terms and conditions of this Consent Agreement, and to pay the civil penalty set forth in Paragraph 8 below.
8. Respondent agrees to pay a penalty in the amount of TEN THOUSAND DOLLARS (\$10,000.)
9. Respondent agrees to pay the above stated penalty amount in eight (8) installments, in the amounts and sequence described below. Respondent specifically agrees that should it be delinquent with any installment payment, interest due shall be calculated from the date of the first installment payment date. Such interest calculation is non-discretionary and required by federal government debt collection procedures.
10. The first penalty installment of \$1,250.00 is due thirty (30) days after issuance of the Final Order in this matter

by the Regional Presiding Officer. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

The remainder of the penalty installment payments shall be made on the following schedule:

Payment No. 2 for \$1,250.00 on or before February 1, 2003
Payment No. 3 for \$1,250.00 on or before May 1, 2003
Payment No. 4 for \$1,250.00 on or before August 1, 2003
Payment No. 5 for \$1,250.00 on or before November 1, 2003
Payment No. 6 for \$1,250.00 on or before February 1, 2004
Payment No. 7 for \$1,250.00 on or before May 1, 2003
Payment No. 8 for \$1,250.00 on or before August 1, 2003

The total of all payments shall equal \$10,000.00.

Respondent shall make each installment payment by remitting a cashier's or certified check for the specified amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

Each payment check shall reference the name and address of Respondent's facility and the EPA docket number of this action. A copy of the check shall be sent simultaneously to:

Ms. Britta Campbell
Enforcement Officer
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 500
Denver, Colorado 80202-2466

11. Respondent agrees and consents that if Respondent fails to pay the penalty amount on the due dates set forth in paragraph ten (10) above, the full penalty amount of \$10,000 (TEN THOUSAND Dollars) or any unpaid balance thereof, shall become due and owing by the Respondent, or, EPA in its sole discretion, may waive all or part of such acceleration. Furthermore, in the event timely payment is not made, consistent with Paragraph 10 above, interest on the penalty amount or any unpaid balance shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid by the due dates set forth in Paragraph 9 above.

12. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
13. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the specific violations alleged in the Complaints filed in these matters.
14. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Pleading and to execute and legally bind that party to this Pleading.
15. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Pleading.

In the Matter of: Five Star Affiliates, Inc.,
Docket No. 08-2002-02

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,
OFFICE OF ENFORCEMENT, COMPLIANCE, AND
ENVIRONMENTAL JUSTICE,

Complainant.

Date: 10/09/02 By: SIGNED
Michael T. Risner, Director
David J. Janik, Supervisory
Enforcement Attorney
Legal Enforcement Program

Date: 10/09/02 By: SIGNED
Connally Mears, Director
Technical Enforcement Program

Date: 10/09/02 By: SIGNED
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
Colorado Bar # 14717
Phone: (303)-312-6924
FAX: (303) 312-6953

FIVE STAR AFFILIATES, INC.
Respondent.

Date: 10/08/02 By: SIGNED
NAME: Mr. Charles Talley, Ph.D.
TITLE:

Date: _____ By: _____
NAME:
TITLE:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. FIFRA-08-2002-02

IN THE MATTER OF:)	
)	
)	
Five Star Affiliates, Inc.)	
6731 East 50 th Avenue)	FINAL ORDER
Commerce City, CO 80022)	
EAST HELENA, MONTANA 59635)	
)	
Respondent.)	
)	

Pursuant to 40 C.F.R. § 22.18(c) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Consent Order.

October 9, 2002
DATE

SIGNED

Alfred C. Smith
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **FINAL ORDER/CONSENT AGREEMENT** in the matter of **FIVE STAR AFFILIATES, INC., DOCKET NO.: FIFRA-08-2002-02** was filed with the Regional Hearing Clerk on October 9, 2002.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

CHARLES TALLEY, PH.D.
FIVE STAR AFFILIATES, INC.
6731 East 50th Avenue
Commerce City, CO 8022

And pouch mailed to:

Judge William Moran
Office of Administrative Law Judges
U.S. EPA (1900L)
Ariel Rios Building
Washington, DC 20460

October 09, 2002

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED WITH THE REGIONAL HEARING CLERK ON
10/09/02**